UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Case No.: 6:16-cv-01685-MGL

State Farm Fire and Casualty Company, Plaintiff, vs. Morningstar Consultants, Inc., Defendant.	**COMPLAINT** **(DECLARATORY JUDGMENT)** **(JURY TRIAL DEMANDED)**

Now comes the Plaintiff, State Farm Fire and Casualty Company ("State Farm"), by and through its undersigned attorneys, and for this Declaratory Judgment Complaint against the Defendant, Morningstar Consultants, Inc. ("Morningstar"), alleges and states as follows:

PARTIES

1. That State Farm is a business entity organized and existing under the laws of the State of Illinois and maintains its principal place of business in Illinois.

2. That Morningstar is a business entity organized and existing under the laws of the State of South Carolina and maintains its principal place of business in South Carolina.

JURISDICTION AND VENUE

3. That State Farm brings this action for declaratory relief pursuant to 28 U.S.C. § 2201 to declare the rights, status and other legal relations of the parties.

4. That this Court has jurisdiction over the parties and subject matter pursuant to 28 U.S.C. § 1322. There is complete diversity of citizenship, and the amount

in controversy exceeds Seventy-Five Thousand Dollars ($75,000.00), exclusive of costs and interest because there is a coverage dispute concerning a Commercial General Liability ("CGL") policy with a face value of One Million Dollars ($1,000,000.00) for property damage.

5. That venue is proper in this Court and division pursuant to 28 U.S.C. § 1391(b) because this is the District where Morningstar maintains its principal place of business.

FACTUAL BACKGROUND

6. That Morningstar's business provides independent inspection and consulting services for various construction projects.

7. That on or about March 23, 2012, Centex Homes filed a Third-Party Complaint against Morningstar in the South Carolina Court of Common Pleas for Horry County captioned Edgewater Horizontal Property Regime vs. Centex, et al., Case No. 2011-CP-26-9015.

8. That on or about December 10, 2014, The Harbour Cove Condominium Association filed an Amended Complaint against Morningstar in the South Carolina Court of Common Pleas for Horry County captioned The Harbour Cove Condominium Association vs. Morningstar Consultants, et al., under Case No. 2014-CP-26-7634.

9. That on or about January 26, 2015, Centex Homes filed a Third-Party Complaint against Morningstar in the South Carolina Court of Common Pleas for Horry County captioned The Greenbriar Condominium Association vs. Centex, et al., Case No. 2014-CP-26-8136.

10. That on or about January 26, 2015, Centex Homes filed a Third-Party

Complaint against Morningstar in the South Carolina Court of Common Pleas for Horry County captioned The Havens Condominium Association vs. Centex, et al., Case No. 2015-CP-26-118.

11. That on or about January 26, 2015, Centex Homes filed a Third-Party Complaint against Morningstar in the South Carolina Court of Common Pleas for Horry County captioned The River Crossing Condominium vs. Centex, et al., Case No. 2015-CP-26-0279.

12. That on or about May 18, 2015, Centex Homes filed a Third-Party Complaint against Morningstar in the South Carolina Court of Common Pleas for Horry County captioned The Tanglewood Condominium Association vs. Centex Homes , et al., under Case No. 2015-CP-26-2718.

13. That on or about July 31, 2015, The Woodlands Condominium Association filed an Amended Complaint against Morningstar in the South Carolina Court of Common Pleas for Horry County captioned The Woodlands Condominium Association vs. Morningstar Consultants, et al., under Case No. 2015-CP-26-4513.

14. That upon information and belief, Morningstar provided supervisory or inspection services related to each one of the aforementioned lawsuits.

15. That in each of the aforementioned lawsuits, the allegations against Morningstar arise out of property damage due to the rendering or failing to render a professional service or treatment as described in the Policy Exclusions Section concerning "supervisory or inspection services."

16. That State Farm insured Morningstar under Commercial General Liability policy Form No. FP613 and Form No. CMP4100 ("Policy") for the following time frames:

02/09/2000 to 02/09/2012 Policy No.: 99 CG 1649 5 – Form FP6103
02/09/2012 to 02/09/2016 Policy No.: 99 CG 1649 5 – Form CMP4100

17. That the Policy excluded coverage for bodily injury, property damage, or personal injury due to rendering or failure to render professional services or treatments, including "supervisory or inspection services."

18. That State Farm hereby petitions the Court to declare the rights, status and other legal relations concerning claims for insurance coverage under the aforementioned Policy.

POLICY LANGUAGE – FORM FP6103
EFFECTIVE FROM 02/09/2000 TO 02/09/2012

19. That from 02/09/2000 to 02/09/2012, State Farm Form FP-6103 has the following relevant language:

SECTION II – COMPREHENSIVE BUSINESS LIABILITY
COVERAGE L – BUSINESS LIABILITY

We will pay those sums that the insured becomes legally obligated to pay as damages because of **bodily injury, property damage, personal injury** or **advertising injury** to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments. This insurance applies only:

1. to **bodily injury** or **property damage** caused by an **occurrence** which takes place in the **coverage territory** during the policy period;

2. to **personal injury** caused by an occurrence committed in the **coverage territory** during the policy period. The **occurrence** must arise out of the conduct of your business, excluding advertising, publishing, and broadcasting or telecasting done by or for you;

3. to **advertising injury** caused by an **occurrence** committed in the **coverage territory** during the policy period. The **occurrence** must be committed in the course of advertising your goods, products or services.

20. That from 02/09/2000 to 02/09/2012, State Farm Form FP-6103 has the

following relevant exclusion:

> **BUSINESS**
> **LIABILITY**
> **EXCLUSIONS**
>
> Under Coverage L, this insurance does not apply:
>
> . . .
>
> 10. to **bodily injury, property damage** or **personal injury** due to rendering or failure to render any professional services or treatments. This includes but is not limited to:
>
> . . .
>
> b. engineering, drafting, surveying or architectural services, including preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
>
> c. supervisory or inspection services;
>
> . . .

21. That from 02/09/2000 to 02/09/2012, State Farm Form FP-6103 has the following relevant definitions:

> **SECTION II**
> **DEFINITIONS**
>
> This section contains the definitions of the words printed in bold face in Section II of this policy. It is an integral part of the policy. The definitions appearing below will be applied as if they were included each time the words they define are used in Section II of this policy.
>
> When used in the provisions applicable to Section II of this policy (including endorsements forming a part of this policy):
>
> . . .
>
> 4. **coverage territory** means:
>
> a. the United States of America…
>
> . . .
>
> 10. **occurrence** means:
>
> a. an accident, including continuous or repeated exposure to substantially the same general harmful conditions which

result in **bodily injury** or **property damage**;

. . .

14. **property damage** means:

a. physical injury to or destruction of tangible property, including all resulting loss of use of that property. All such loss of use will be considered to occur at the time of the physical injury that caused it; or

b. loss of use of tangible property that is not physically injured or destroyed, provided such loss of use is caused by physical injury to or destruction of other tangible property. All such loss of use will be considered to occur at the time of the **occurrence** that caused it;

. . .

POLICY LANGUAGE – FORM CMP4100
EFFECTIVE FROM 02/09/2012 TO 02/09/2016

22. That from 02/09/2012 to 02/09/2016, State Farm Form CMP4100 has the following relevant language:

SECTION II – LIABILITY
COVERAGE L – BUSINESS LIABILITY

1. When a Limit of Insurance is shown in the Declarations for **Coverage L – Business Liability**, we will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured by counsel of our choice against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury", to which this insurance does not apply…

2. This insurance applies:

a. To "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1.a. of SECTION II – WHO IS AN INSURED and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part…

b. To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

. . .

23. That from 02/09/2012 to 02/09/2016, State Farm Form CMP4100 has the following relevant exclusion:

SECTION II – EXCLUSIONS

Applicable to **Coverage L – Business Liability,** this insurance does not apply to:

. . .

11. **Professional Services or Treatment**

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional service or treatment. This includes but is not limited to:

a. Legal, accounting or advertising services;

b. Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications.

c. Supervisory, inspection, architectural or engineering activities;

. . .

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering or failure to render of any professional service.

. . .

24. That from 02/09/2012 to 02/09/2016, State Farm Form CMP4100 has the

following relevant definitions:

SECTION II – DEFINITIONS

. . .

4. “Coverage territory” means:

   a. The United States of America…

. . .

17. “Occurrence” means:

   a. An accident, including continuous or repeated exposure to substantially the same general harmful conditions;

. . .

21. “Property damage” means:

   a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

   b. Loss of use of tangible property that is not physically injured or destroyed, provided such loss of use is caused by physical injury to or destruction of other tangible property. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

. . .

FOR A FIRST CAUSE OF ACTION
NO COVERAGE UNDER THE POLICY AS TO CASE NO. 2011-CP-26-9015

25. That State Farm incorporates the previous paragraphs as if repeated herein verbatim.

26. That in Case No. 2011-CP-26-9015, Centex Homes alleges Morningstar was negligent in its Third-Party Complaint and identifies Morningstar as providing “independent third-party inspections of all Buildings during construction of the Project” related to The Edgewater project.

27. That the State Farm Policy excludes coverage for property damage due to

rendering or failing to render professional services or treatments, including "supervisory or inspection services."

28. That State Farm hereby petitions the Court to declare that State Farm has no duty to defend or indemnify Morningstar as to Case No. 2011-CP-26-9015 because its Policy excluded coverage for property damage due to rendering or failure to render professional services or treatments, including "supervisory or inspection services."

FOR A SECOND CAUSE OF ACTION
NO COVERAGE UNDER THE POLICY AS TO CASE NO. 2014-CP-26-7634

29. That State Farm incorporates the previous paragraphs as if repeated herein verbatim.

30. That in Case No. 2014-CP-26-7634, Harbour Cove Condominium Association identifies Morningstar as "engaged in inspecting the construction including the installation of the stucco, brick veneer, flashings, roofing, and other building components on and to the condominiums and buildings townhomes located the Harbor Cover [sic]."

31. That In the same action, Harbour Cove Condominium Association alleges Morningstar was grossly negligent, negligent, careless, reckless, willful and wanton in the following particulars:

a. "In failing to use due care in the inspection, and observation for the project;
b. In inspecting, and observing buildings that were constructed in a manner which it was inevitable that water would intrude into the buildings and condominiums at issue causing damage and decay to the wall system;
c. In inspecting and observing buildings that failed to provide sufficient barriers against water intrusion into the wall system and an adequate avenue for the exit of water that gets into the wall system resulting in water damage;
d. In inspecting and observing buildings that were constructed [sic] violation of the building code, standard building practices, relevant product

specifications, [sic] that were constructed in violation of the building code, standard building practices, relevant product specifications, and accepted construction industry standards and practices;

e. In failing to perform contract administration to insure the buildings and building components were constructed and/or installed in accordance with the building codes, standard building practices, relevant product specifications and accepted [sic];

f. In allowing the stucco, roofing, window and door installation, secondary weather barrier, flashings and sealants to be constructed and/or installed in violation of the building codes, product specifications and accepted construction industry standards and practices;

g. Other deficiencies or failures as will be proven at trial."

32. That the State Farm Policy excludes coverage for property damage due to rendering or failing to render professional services or treatments, including "supervisory or inspection services."

33. That State Farm hereby petitions the Court to declare that State Farm has no duty to defend or indemnify Morningstar as to Case No. 2014-CP-26-7634 because its Policy excluded coverage for property damage due to rendering or failure to render professional services or treatments, including "supervisory or inspection services."

FOR A THIRD CAUSE OF ACTION
NO COVERAGE UNDER THE POLICY AS TO CASE NO. 2014-CP-26-8136

34. That State Farm incorporates the previous paragraphs as if repeated herein verbatim.

35. That in Case No. 2014-CP-26-8136, Centex Homes alleges Morningstar was negligent in its Third-Party Complaint and identifies Morningstar as providing "independent third-party inspections of buildings during construction" related to The Greenbriar Condominium project.

36. That the State Farm Policy excludes coverage for property damage due to rendering or failing to render professional services or treatments, including "supervisory

or inspection services."

37. That State Farm hereby petitions the Court to declare that State Farm has no duty to defend or indemnify Morningstar as to Case No. 2014-CP-26-8136 because its Policy excluded coverage for property damage due to rendering or failure to render professional services or treatments, including "supervisory or inspection services."

FOR A FOURTH CAUSE OF ACTION
NO COVERAGE UNDER THE POLICY AS TO CASE NO. 2015-CP-26-118

38. That State Farm incorporates the previous paragraphs as if repeated herein verbatim.

39. That in Case No. 2015-CP-26-118, Centex Homes alleges Morningstar was negligent in its Third-Party Complaint and identifies Morningstar as providing "independent third-party inspections of buildings during construction" related to The Havens Condominium project.

40. That the State Farm Policy excludes coverage for property damage due to rendering or failing to render professional services or treatments, including "supervisory or inspection services."

41. That State Farm hereby petitions the Court to declare that State Farm has no duty to defend or indemnify Morningstar as to Case No. 2015-CP-26-118 because its Policy excluded coverage for property damage due to rendering or failure to render professional services or treatments, including "supervisory or inspection services."

FOR A FIFTH CAUSE OF ACTION
NO COVERAGE UNDER THE POLICY AS TO CASE NO. 2015-CP-26-0279

42. That State Farm incorporates the previous paragraphs as if repeated herein verbatim.

43. That in Case No. 2015-CP-26-0279, Centex Homes alleges Morningstar was negligent in its Third-Party Complaint and identifies Morningstar as providing “independent third-party inspections of buildings during construction” related to The River Crossing Condominium project.

44. That the State Farm Policy excludes coverage for property damage due to rendering or failing to render professional services or treatments, including “supervisory or inspection services.”

45. That State Farm hereby petitions the Court to declare that State Farm has no duty to defend or indemnify Morningstar as to Case No. 2015-CP-26-0279 because its Policy excluded coverage for property damage due to rendering or failure to render professional services or treatments, including “supervisory or inspection services.”

FOR A SIXTH CAUSE OF ACTION
NO COVERAGE UNDER THE POLICY AS TO CASE NO. 2015-CP-26-2718

46. That State Farm incorporates the previous paragraphs as if repeated herein verbatim.

47. That in Case No. 2015-CP-26-2718, Centex Homes alleges Morningstar was negligent in its Third-Party Complaint and identifies Morningstar as providing “independent third-party inspections of buildings during construction” related to The Tanglewood Condominium project.

48. That the State Farm Policy excludes coverage for property damage due to rendering or failing to render professional services or treatments, including “supervisory or inspection services.”

49. That State Farm hereby petitions the Court to declare that State Farm has no duty to defend or indemnify Morningstar as to Case No. 2015-CP-26-2718 because

its Policy excluded coverage for property damage due to rendering or failure to render professional services or treatments, including "supervisory or inspection services."

FOR A SEVENTH CAUSE OF ACTION
NO COVERAGE UNDER THE POLICY AS TO CASE NO. 2015-CP-26-4513

50. That State Farm incorporates the previous paragraphs as if repeated herein verbatim.

51. That in Case No. 2015-CP-26-4513, The Woodlands Condominium Association identifies Morningstar as "engaged in inspecting the construction including the installation of the stucco, flashings, roofing, and other building components on and to the townhouse style condominiums and buildings know [sic] as The Woodlands."

52. That In the same action, The Woodlands Condominium Association alleges Morningstar was grossly negligent, negligent, careless, reckless, willful and wanton in the following particulars:

a. "In failing to use due care in the inspection, and observation for the project;
b. In constructing, inspecting, and observing buildings that were constructed in a manner which it was inevitable that water would intrude into the townhouse style condominiums and buildings at issue causing damage and decay to the wall system;
c. In constructing, inspecting and observing buildings that failed to provide sufficient barriers against water intrusion into the wall system and an adequate avenue for the exit of water that gets into the wall system resulting in water damage;
d. In inspecting and observing buildings that were constructed [sic] violation of the building code, standard building practices, relevant product specifications, [sic] that were constructed in violation of the building code, standard building practices, relevant product specifications, and accepted construction industry standards and practices;
e. In constructing and allowing the stucco, roofing, window and door installation, secondary weather barrier, flashings and sealants to be constructed and/or installed in violation of the building codes, product specifications and accepted construction industry standards and practices.
f. Other deficiencies or failures as will be proven at trial."

53. That the State Farm Policy excludes coverage for property damage due to rendering or failing to render professional services or treatments, including "supervisory or inspection services."

54. That State Farm hereby petitions the Court to declare that State Farm has no duty to defend or indemnify Morningstar as to Case No. 2015-CP-26-4513 because its Policy excluded coverage for property damage due to rendering or failure to render professional services or treatments, including "supervisory or inspection services."

WHEREFORE, State Farm requests this Court issue a declaratory judgment consistent with the relief sought herein and further declare the rights, status and other legal relations of the parties hereto as this Court deems just and proper.

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May 25, 2016